



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Central Regional Office, 627 Main Street, Worcester, MA 01608

JANE M. SWIFT
Governor

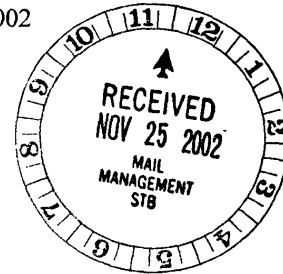
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206713

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

November 22, 2002



Via U.S. Postal Service Express Mail

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423

Re: LB Railco, Inc., Notice of Exemption Pursuant to
49 C.F.R. § 1150.42
FINANCE DOCKET NO. 34281

Dear Secretary Williams,

Enclosed please find the unbound original and ten copies of the Department of Environmental Protection's Motion to Reject the Notice of Exemption captioned above. I have also enclosed an extra copy of the Motion and a self-addressed stamped envelope, and would appreciate receiving a date-stamped copy of the Motion.

Thank you for your consideration.

Very truly yours,

Mary Jude Eigsley
Senior Regional Counsel

MJP/pr
Enclosures

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171.

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BEFORE THE
SURFACE TRANSPORTATION BOARD



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FINANCE DOCKET NO. 34281

LB RAILCO, INC.
LEASE AND OPERATION EXEMPTION
PROVIDENCE AND WORCESTER RAILWAY COMPANY

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
MOTION TO REJECT
NOTICE OF EXEMPTION

On November 18, 2002, LB Railco, Inc. ("LB Railco") filed with the Surface Transportation Board (the "Board") a Notice of Exemption Pursuant to 49 C.F.R. § 1150.42 seeking to establish a solid waste transfer station in Millbury, Massachusetts (the "Notice of Exemption"). LB Railco's Notice of Exemption contains incomplete, false, or misleading information and is therefore void ab initio pursuant to 40 C.F.R. §§ 1150.42(c) and 1150.44. The Commonwealth of Massachusetts, Department of Environmental Protection (the "Department") therefore requests that the Board reject the Notice of Exemption.

The Proposed Transaction

In the Notice of Exemption, LB Railco states that it has entered into a lease and interchange agreement with the Providence and Worcester Railroad providing for LB Railco's operation of certain track and construction of a "terminal" in Millbury, Massachusetts. The "terminal" is to be constructed on a 3.5 acre parcel of property owned by C & S Lumber Company, Inc. (the "Site"). LB Railco proposes to accept both

containerized and uncontainerized solid waste at the Site, specifically contaminated soils and construction and demolition debris, not "non-hazardous waste and aggregates" as characterized in the Notice of Exemption. Attached as Exhibit 1 is a copy of a submittal made by LB Railco to the Department August 29, 2002, describing its proposed operations, which is inconsistent with the Notice of Exemption. Uncontainerized contaminated soils and building debris that will likely include asbestos-containing materials (such as shingles, tiles, insulations and mastics) will be dumped from trucks at the Site into open enclosures, and then loaded into railcars. Given that the materials handled at the Site are solid wastes, the "terminal" is more accurately identified as a combined solid waste handling facility and a railcar loading facility for the truck-to-rail transfer of uncontainerized contaminated soils and construction and demolition debris.

Contrary to LB Railco's description of the wastes as non-hazardous, the contaminated soils will contain both oil and hazardous materials, albeit not at levels that would require the soils to be handled as hazardous waste under the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.6901-6992. The fact that the soils are non-RCRA waste, as LB Railco describes in Exhibit 1, does not mean that the soils are non-hazardous. Similarly, LB Railco fails to address the likely presence of asbestos-containing waste materials in the construction and demolition debris to be handled at the Site. Asbestos has been identified as a known human carcinogen by the United States Environmental Protection Agency ("EPA"). For these reasons, the Notice of Exemption's description of the materials to be handled as non-hazardous is simply false and misleading.

The Notice of Exemption asserts that the handling of contaminated soils and solid waste that contains asbestos at the Site "will have no significant environmental effect"; however, LB Railco has not prepared an Environmental Report for the proposed action to support this claim. The Site borders the Blackstone River, and as the Notice of Exemption acknowledges, is entirely within the 200-foot riverfront area protected under the Commonwealth's Rivers Protection Act, c. 258 of the Acts of 1996. The Notice of Exemption is misleading in omitting information that would disclose the significant environmental impacts that could result from operation of a solid waste transfer station at the Site. For example, LB Railco fails to disclose that the Site is within the wellhead protection area (Zone II) of two public water supply wells. These wells are located downgradient of the Site, and have been determined to be under the influence of surface water, namely the Blackstone River. Therefore, without specific information about the effects of storm water run-off from the Site to the Blackstone River, including whether EPA would require LB Railco to obtain a storm water discharge permit, it is impossible to conclude, as LB Railco does, that the project will have "no adverse environmental effect."

In acknowledging that the Site is located within the riverfront area, LB Railco discusses only the regulations promulgated under the Rivers Protection Act and the Wetlands Protection Act, Massachusetts General Laws c. 131 § 40, which do allow development of the riverfront area under certain circumstances. Again without the benefit of an Environmental Report, LB Railco concludes that the Site constitutes a previously degraded area, to which a less stringent set of performance standards would apply, and further concludes that siting a solid waste handling facility in the riverfront

area would "improve" conditions at the Site. These conclusions are unfounded and misleading.

More important, though, is that LB Railco neglects to discuss the Department's regulation that prohibits siting of solid waste management facilities in a riverfront area or in a Zone II of a public water supply. What LB Railco intentionally ignores is the prohibition on siting solid waste management facilities in the riverfront area, adopted under Massachusetts General Laws c. 111 §150A, the Solid Waste Management Act. Although neither the Department's wetland regulations nor its solid waste regulations categorically prohibit development of the site as a rail yard, the solid waste regulations do not allow for the handling of waste materials in this sensitive area.

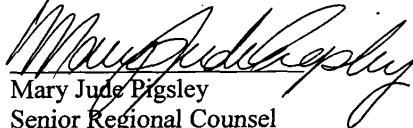
Finally, the Notice of Exemption fails to note that the Site is within the Blackstone River Valley National Heritage Corridor established by Congress in 1986 pursuant to P.L. 99-647. The Notice of Exemption contains no information concerning impacts on the Corridor, and does not state whether LB Railco has consulted with the National Park Service about the proposed solid waste transfer station.

Conclusion

As outlined above, the Notice of Exemption contains incomplete and inaccurate information concerning the nature of the activities proposed at the Site and is misleading in omitting significant information related to the environmental impacts of those activities. Because a notice of exemption that contains false and misleading information

is void ab initio under the Board's regulations, the Department respectfully requests that the Board reject the Notice of Exemption filed on November 18, 2002.

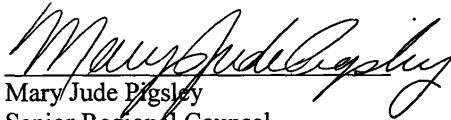
Respectfully submitted,


Mary Jude Pigsley
Senior Regional Counsel
Commonwealth of Massachusetts
Department of Environmental Protection
Central Regional Office
627 Main Street
Worcester, Massachusetts 01608

Certificate of Service

I certify that I have this day served a copy of the Massachusetts Department of Environmental Protection's Motion to Reject Notice of Exemption upon the following parties by U.S. Postal Service Express Mail:

Counsel for LB Railco, Inc.
John F. McHugh, Esq.
6 Water Street, Suite 401
New York, NY 10004


Mary Jude Pigsley
Senior Regional Counsel

11/22/02
Date

EXHIBIT 1

PRESENTATION TO THE
MASSACHUSETTS DEPARTMENT
OF
ENVIRONMENTAL PROTECTION
LB RAILCO, INC.
SOLID WASTE
TRANSLOAD FACILITY

ROUTE 146
MILLBURY, MASSACHUSETTS

AUGUST 29, 2002

Prepared for:

LB RAILCO, INC.

By:

St. Germain & Associates, Inc.
172 U.S. Route One
Scarborough, ME 04074



1.0 Introduction

LB Railco, Inc. (LBRR) is a federally-chartered railroad that is preparing to operate a rail transload facility in Millbury, Massachusetts beginning this fall. The facility will receive a variety of non-hazardous bulk solid wastes by truck and transload them into waiting railcars for transport to waste facilities out of state. In cooperation with the Providence & Worcester Railroad, LBRR is developing this project to provide an additional means to meet growing waste transportation demand in the region. St.Germain & Associates and Taconic Engineering are assisting LBRR in developing the Site to meet this solid waste demand in a manner responsive to local and state health, safety and environmental concerns. This document has been prepared to provide notification of the project and a project overview for the Massachusetts Department of Environmental Protection (DEP).

2.0 Site Location & Description

The LBRR railcar loading operation will be located on a 3.5-acre parcel in Millbury, Massachusetts (see attached locus map of the Site and surrounding area). The Site is owned by the Providence & Worcester Railroad and C & S Lumber Company, Inc. and was formerly used as a rail unloading and staging area for wood products. The lot is zoned for industrial use by the Town of Millbury and is identified as parcel 10 on the number 36 Millbury Assessors Map.

The area is currently unused save for the Providence and Worcester Rail line forming its Western boundary. The existing surface of the project Site is rail ballast, track ballast and compacted soil. There are no structures to be built or demolished, and Site preparation and improvements will not involve excavation. The property is bordered to the South by an elevated portion of Route 146, to the North by a parcel owned by the Massachusetts State Highway Department, and to the East by the Blackstone River.

3.0 Project Description

LBRR will be conducting and operating a truck-to-train waste transloading operation at the Project Site in Millbury. The operation will take truck delivered, non-hazardous wastes and load the materials into waiting railcars for shipment to disposal and processing facilities outside of Massachusetts. The operation is designed to handle the following wastes:

- Processed and unprocessed construction and demolition debris
- Non-RCRA contaminated soils
- Containerized solid waste

The operation will not accept non-containerized municipal solid waste, sludge, or any other material that LBRR deems unacceptable. Disposal will not be done at the Site and the handling process is designed to keep the waste material away from the ground surface during the transload operation.

Materials will be delivered to the Site by various types of commercial trucks. Trucks delivering non-containerized material to the Site will unload into a steel receiving container, sized approximately 40 ft. x 40 ft. x 8 ft. An excavator will then transfer the waste to a waiting railcar. Containerized waste will be loaded directly from trucks onto railcars. The full railcars will be switched out by LBRR and the Providence & Worcester Railroad and transported to disposal facilities out of state.

4.0 Regulatory Interaction

As a federally-chartered railroad, the LBRR transloading operation is regulated by the Surface Transportation Board which preempts State, County, or Local government control and allows them to operate this facility without permits and approvals from those entities, provided that local health and safety laws are met.

LBRR is committed to providing an environmentally responsive design and operation of its new transload facility. To ensure success in this effort, LBRR has teamed with St.Germain and Taconic, two environmental engineering and consulting firms that are respected for their experience with permitting solid waste facilities in the Northeast. These firms will work with LBRR to ensure that the health and environmental requirements of the DEP and the Town of Millbury are met. Compliance with these requirements will be described in an informational submittal produced by this team for the DEP and the Town of Millbury.

5.0 Attachments

- Attachment 1 – Locus Map
- Attachment 2 – Site Sketch
- Attachment 3 – Drawing of Operation
- Attachment 4 – Operations & Site Pictures
- Attachment 5 – Description of LB Railco